



the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief which are available to the petitioner ... and shall set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970). “Habeas petitions which appear on their face to be legally insufficient are subject to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

#### B. Petitioner’s Claim

In this case, Petitioner specifically alleges that his sole challenge to the denial of parole is an ex post facto challenge to the Governor’s authority to reverse the determination of the California Parole Board finding him suitable for parole. Petitioner alleges that he was sentenced on December 8, 1978 for a crime committed on October 17, 1977 and that the amendment to the parole regulations providing for gubernatorial review of parole decisions which occurred in 1988 constitutes an ex post facto law in it’s application to him. While Petitioner also raises a second claim challenging the California Supreme Court’s failure to grant relief on this claim, the Court finds that the second claim raises the same underlying issue as the first.

In 1977, the California Legislature replaced the ISL with the Determinate Sentencing Law (“DSL”). The DSL mandated annual parole hearings pursuant to California Penal Code section 3041.5(b)(2). *See Morales v. California Dep’t of Corrections*, 16 F.3d 1001, 1003 (9th Cir. 1994) (citing *Connor v. Estelle*, 981 F.2d 1032, 1034 (9th Cir. 1992)), *rev’d on other grounds*, 514 U.S. 499 (1995). In 1988, voters passed Proposition 89, which gave the governor power to review and reverse or modify the Board of Parole Term’s (“BPT”) parole decision. *See Johnson v. Gomez*, 92 F.3d

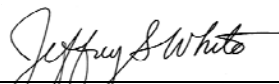
1 964, 965 (9th Cir. 1996). In *Johnson*, the Ninth Circuit addressed the same ex post facto  
2 challenge to the transfer of final parole decision making authority from the BPT to the  
3 governor as Petitioner raises here. The Court found that the application of the 1988 amendment  
4 to a prisoner who, like Petitioner, was found suitable by the Board, but whose suitability  
5 determination was reversed by the Governor, does not violate the Ex Post Facto Clause because  
6 the prisoner cannot demonstrate with certainty that he would have been granted parole before the  
7 change and the change in the law was neutral because it “simply removes final parole  
8 decisionmaking authority from the BPT and places it in the hands of the governor.” *Id.* at 967-  
9 68. Therefore, because Petitioner’s claim has already been decided by the Ninth Circuit,  
10 it fails to state a claim for relief here. Accordingly, the instant petition is summarily  
11 dismissed. *See* Rule 4, Rules Governing Section 2254 Cases, 28 U.S.C. foll. § 2254.

### 12 CONCLUSION

13 The instant petition is summarily DISMISSED. The Clerk shall terminate all  
14 pending motions and close the file.

15 IT IS SO ORDERED.

16 DATED: January 9, 2008

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19 JEFFREY S. WHITE  
20 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER G JEFFERSON,  
Plaintiff,

Case Number: CV07-04226 JSW

**CERTIFICATE OF SERVICE**

v.


ARNOLD SCHWARZENEGGER et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 9, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alexander G. Jefferson  
B99662  
Southern Desert Correctional Center  
P.O. Box 208  
Indian Springs, NV 89070-0208

Dated: January 9, 2008

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk